

# Insurance and Real Estate Division

G1/2022 When is a Warranty an Insurance Product

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**Guideline No.:** G1/2022

**Title:** When is a Warranty an Insurance Product

**Date:** July 2022

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## Introduction

This Guideline is issued pursuant to s. 10-3 of *The Insurance Act* (the “Act”). The information contained in the guidelines posted on this website is an accurate representation of the Superintendent’s interpretation on the date the information is published, but is subject to change and may be replaced by more recent guidelines. The legislation is also subject to interpretation by a Court of competent jurisdiction.

This Guideline sets out the Superintendent’s expectations regarding the following:

- A. General information on Warranties and when they are considered insurance
- B. Classification of Warranties
- C. Intermediary Regulatory Regime with Respect to Warranties

### A. General Information on Warranties

In Saskatchewan, we view warranties to be insurance when the warranty covers more than manufacturer’s defects or the quality of the product regardless of whether it is the retailer, manufacturer, or another entity that is providing the warranty. If a warranty is found to be insurance, the party underwriting the risk must be a licensed insurer. This is to protect the insured by ensuring that adequate funds are available to cover losses. This is applicable regardless of who is providing the warranty. Furthermore, notwithstanding that a particular warranty may cover only manufacturer’s defects or the quality of a product, if the coverage is provided by an arms-length insurance company (i.e. an insurance company that is not a closely related entity), the Superintendent views it as an insurance contract and it must be provided by an insurance company that is licensed to transact insurance in Saskatchewan.

For reference, “insurance” is defined in *The Insurance Act* (the “Act”) as *the undertaking by one person to indemnify another person against loss or liability for loss with respect to certain risks or perils to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value on the happening of a certain event and, without limiting the generality of the foregoing, includes: (a) life insurance; and (b) any other prescribed activity.*

## Statutory Warranties

Pursuant to *The Consumer Protection and Business Practices Act* (CPBPA) (consumer protection legislation in Saskatchewan), there are certain statutory warranties in respect of consumer products that retail sellers and manufacturers are required to provide in connection with the sale of the product. These statutory warranties are included in the purchase price of the product with no additional charge. Statutory warranties are never considered insurance. They include, for example:

- That the product is of acceptable quality;
- That the product is reasonably fit for a purpose specified by the consumer to the retail seller; and
- That the product and its components will be durable for a reasonable period.

(see s. 19 of the CPBPA for the full list of statutory warranties)

## Additional Written Warranties and Service Contracts

In addition to statutory warranties, a manufacturer or retail seller may wish to offer an additional written warranty and/or a service contract on consumer products, usually for an additional charge. These may be referred to as Extended Warranties or Extended Third Party Warranties. “Additional written warranties”, as defined in the CPBPA, means any undertaking in writing that the warrantor will *repair, replace, make a refund or take other remedial action respecting a consumer product that breaks down, malfunctions or fails to meet the specifications in the undertaking, and includes a service contract*. An additional written warranty can be provided by a manufacturer, retail seller or *other person*. The Superintendent’s view is that an “other person” must be a closely related entity (“CRE”) of the manufacturer or retail seller. Otherwise, the contract will likely be classified as insurance, and appropriate licensing will be required.

## Service Contract

A service contract is defined in the CPBPA as a written contract for performance of services that (i) is over a fixed period or for a specified duration determined by means other than time; and (ii) is related to the maintenance or repair of a consumer product, whether or not the contract provides for the furnishing of parts or materials to be supplied with or consumed in the performance of those services. Whether a service contract falls within this definition will depend on whether the maintenance or repair relates directly to ongoing wear and tear due to use of the item as opposed to damage from an outside risk or theft/loss. If the service provided is solely maintenance due to reasonable wear and tear, it will likely not be viewed as insurance. If the service provided is to repair a product, it will be considered insurance if the repair is related to damage from an outside risk or theft/loss.

## **B. Classification of Extended Warranties**

Extended Warranties are not explicitly defined in either the CPBPA or *The Insurance Act*. However, the generally accepted meaning is programs offered by the manufacturer or retail seller or a closely related entity (CRE) that cover only manufacturer's defects or the quality of the product. The manufacturer or retail seller or CRE is the entity that administers the program. Under this situation, it is up to the manufacturer or retail seller to decide whether or not it will have its program backed by the manufacturer, retail seller or CRE or whether it will be underwritten by an insurance company.

- When backed by the manufacturer, retail seller or CRE, extended warranties are not considered contracts of insurance (unless the coverage exceeds defects/quality) but may be subject to consumer protection legislation. The warranty contract is between the manufacturer or retail seller and the consumer;
- When underwritten by an insurance company (that is not a CRE), we consider the coverage to be an insurance contract and it must be underwritten by an insurance company that is licensed to transact insurance in Saskatchewan. The contract is between the insurer and the consumer. The governing legislation is *The Insurance Act*. The retail seller will need to obtain either a Restricted Insurance Agent ("RIA") licence (if permitted – see below section) or a Property and Casualty ("P&C") Agency licence.

### Extended Third Party Warranties

Extended third party warranties are programs that are administered by an entity other than the manufacturer, retail seller, CRE or underwriting insurer. The warranties are considered contracts of insurance and must be underwritten by an insurance company that is licensed to transact insurance in Saskatchewan. The third party administering the warranty must be licensed as a Restricted Insurance Agent by The Insurance Councils of Saskatchewan. The warranty contract is between the insurer and the consumer. The governing legislation is *The Insurance Act*.

## **C. Intermediary Regulatory Regime pertaining to Warranties (when determined to be insurance products) – Insurance Councils of Saskatchewan**

Businesses that wish to sell extended warranties that are considered insurance, including extended third party warranties (which are always considered to be insurance) and service contracts (which are sometimes insurance), must obtain the appropriate licensing for the business or for its staff, as the case may be, from the General Insurance Council of Saskatchewan.

There are two types of intermediary licences: (a) Restricted Insurance Agent licence; and (b) Property and Casualty Agency licence. Only certain products can be sold under a RIA licence. See Interpretation Bulletin B1/2022 for more information and clarification.

### Restricted Insurance Agent (RIA) Licence

A RIA licence is a licence held by the business that permits the business to sell certain types of insurance without obtaining a separate licence for each of its employees. The Act and *The Insurance Regulations* (the “Regulations”) and the Interpretation Bulletin on RIA licensing (the “Bulletin”) identify the types of business entities that may apply for a RIA’s licence and lists the types of insurance that each type of business entity is eligible to offer and sell. Note that the Bulletin provides guidance, but where it conflicts with the Act or Regulations, the Act or Regulations will govern.

### Property and Casualty Agent/Salesperson Licence

Those types of business entities that are not specifically listed in the Regulations and the Guideline document are not eligible for an RIA licence and are required to obtain a Property and Casualty Agent/Salesperson licence in order to offer or sell insurance or warranties that are considered to be insurance in accordance with this Guideline.

### Insurance Agent and Restricted Insurance Agent Licensing:

For further information regarding Restricted Insurance Agent licensing and Property and Casualty Agent/Salesperson licensing, please contact the Insurance Councils of Saskatchewan.

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Regina, SK S4S 6X3  
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If you have any questions regarding this Guideline, please contact the FCAA’s Insurance and Real Estate Division at:

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